

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellants : Stefano FACCIN et al.
Application No. : 09/758,267
Confirmation No. : 4056
Filing Date : January 12, 2001
Art Unit : 2616
Examiner : Ian N. Moore
Title : COMMON CHARGING IDENTIFIER FOR
COMMUNICATION NETWORKS
Docket No. : NOKIA.30US

May 8, 2008

**PETITION FOR ACCEPTANCE OF APPEAL BRIEF
AND AGAINST DISMISSAL OF APPEAL**

Sir:

Appellants hereby petition for acceptance of the Appeal Brief filed on December 10, 2007 and against the dismissal of this appeal.

Background

Applicants noted an appeal from the final rejection in this application and filed an Appeal Brief on December 10, 2007. In an Office Communication dated on or about February 6, 2008, the appeal was dismissed because the claimed invention was not "mapped to the independent claims on appeal." On March 6, 2008, appellants declined to revise their appeal brief and requested reconsideration. On or about April 8, 2008, another Office Communication denied appellants'

request and repeated the requirement for the claimed invention to be "mapped to the independent claims on appeal."

Argument

Appellants hereby repeat and incorporate by reference the four arguments set forth in the Request for Reconsideration on March 6, 2008. The Office Communication responded only to the second argument, which asserted in part that Rule 41.37(c) does not refer to, mention, or require "mapping" and that Chapter 12 of the Manual of Patent Examining procedure (MPEP) did not indicate that Rule 41.37 requires mapping.

In its response to the second argument, the Office Communication dated April 8, 2008 quoted Rule 41.37 and MPEP 1205.02. It can be easily seen from the quotes, that neither Rule 41.37 nor MPEP 1205.02 states or requires that the claimed invention must be "mapped" to the independent claims on appeal. They do state that the Summary of Claimed Subject Matter must make reference to page and line number of the specification, but the Summary of Claimed Subject Matter in the Appeal Brief does in fact refer to the specification by page and line number, as well as to the drawings. They do indicate that the structure, material or acts described in the specification as corresponding to each claimed means plus function or step plus function must be set forth with reference to the specification by page and line number, and to the drawings. However, there are no means plus function or step plus function recited in claims 38 and 39, the only two claims on appeal; all other pending claims having been allowed by the Examiner. Thus, the quotation of Rule 41.37 and MPEP 1205.02 in the Office Communication supports appellants' position.

The third and fourth arguments asserted in part that appellants have a statutory right of appeal pursuant to 35 USC 192 and that Rule 41.37 improperly attempts to permit the Examiner to deprive appellant of this right. Appellants relatedly further submit that the USPTO has no authority to issue Rule 41.37 because it is a substantive rule that adversely affects and alters appellants' right to appeal under 35 USC 192. See Merck & Co., Inc. v. Kessler, 80 F.3d 1543 (Fed. Cir. 1996); Animal Legal Def. Fund v. Quigg, 932 F.2d 920 (Fed. Cir. 1991); Tafas v. Dudas, 1:07cv846, Slip Opinion at 25 (E.D. Va. April 1, 2008)(shifting the burden of proof on examination is a substantive rule altering applicants' rights under 35 USC 131).

The Commissioner is authorized to charge the Petition fee of \$130.00, and any other fees necessary for the consideration of this Petition or to avoid the dismissal of the appeal or the abandonment of the application, to Deposit Account No. 10-0100 (Dkt. No. NOKIA.30US).

Respectfully submitted,


Robert M. Bauer, Esq., Reg. No. 34,487

May 8, 2008

Date